Supreme Court, U.S.
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No. 97-135

In The

Supreme Court of the United States

October Term, 1996

OLD VAIL PARTNERS,

Petitioner,

v.

COUNTY OF RIVERSIDE; CITY OF TEMECULA,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

REPLY TO OPPOSITION OF RESPONDENT COUNTY OF RIVERSIDE TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the application of *Younger v. Harris*, 401 U.S. 37, 91 S.Ct. 746 (1971), rather than *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496, 61 S.Ct. 643 (1941), to a California inverse condemnation litigant, filing concurrent state and federal actions, improperly forecloses, in violation of the Fifth Amendment to the U.S. Constitution, that litigant's access to the federal courts for the adjudication of a civil rights claim under 42 U.S.C. §§ 1983, 1985.

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INTRODUCTION

Petitioner, Old Vail Partners (hereinafter "Petitioner"), respectfully requests this Court to consider the following reply to the Opposition of Respondent, County of Riverside (hereinafter "Respondent"), in its determination to issue a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit (hereinafter "Ninth Circuit") entered herein on March 10, 1997.

REASONS FOR REJECTING THE OPPOSITION

A. Respondent Fails To Address The Applicability Of Federal Abstention To Actions At Law Vis-a-vis Actions In Equity.

This Court has often recognized that federal courts have a strict duty to exercise the jurisdiction conferred upon them by Congress. (See, e.g., *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 96 S.Ct. 1236 (1976) [finding that "federal courts have a virtually unflagging obligation . . . to exercise the jurisdiction given them"]; *England v. Louisiana State Board of Medical Examiners*, 375 U.S. 411, 415, 84 S.Ct. 461 (1964) [recognizing that "[w]hen a federal court is properly appealed to in a case over which it has by law jurisdiction, it is its duty to take such jurisdiction"].)

The exercise of federal jurisdiction is circumscribed by the policies of comity articulated within the federal abstention doctrines. (See generally, *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496, 501-502, 61 S.Ct. 643

(1941).) The implementation of these federal abstention doctrines, however, does not constitute a "technical rule of equity procedure". (*Louisiana Power & Light Co. v. Thibodaux*, 360 U.S. 25, 79 S.Ct. 1070 (1959).) Rather, the authority of a federal court to abstain from exercising its jurisdiction only extends to those cases in which the court has discretion to grant or deny relief. (*New Orleans Public Service, Inc. v. Council of City of New Orleans*, 491 U.S. 350, 359, 109 S.Ct. 2506 (1989).) Thus, the application of the principles of abstention to actions "at law" only permits a federal court to enter a stay postponing adjudication of the dispute, not to dismiss the federal action. (*Quackenbush v. Allstate Insurance Co.*, ___ U.S. ___, 116 S.Ct. 1712 (1996); see also, *Louisiana Power & Light Co. v. Thibodaux*, 360 U.S. at 28-30.)

The complaint substantively seeks damages "at law" for a regulatory taking effectuated by the County of Riverside specially assessing its property at a "Commercial" rate, while the City of Temecula zoned the property for "Professional Office" use, i.e., a substantially more restricted use than "Commercial". The legal, as distinguished from the equitable, nature of Petitioner's claims renders the Ninth Circuit's relinquishment of jurisdiction under *Younger v. Harris*, 401 U.S. 37, 91 S.Ct. 746 (1971) inappropriate. (See, *In re United States Brass Corporation*, 110 F.3d 1261 (7th Cir. 1997) [interpreting effect of *Quackenbush* upon federal abstention].)

This Court should grant its writ of certiorari to explain that *Quackenbush* prohibits abstention under

either *Younger* or *Burford*[1] where a federal court plaintiff is prosecuting an action at law, rather than equity.

B. Petitioner's Claims Involve Unsettled Issues Of State Law.

Respondent's sole objection to the proposed application of *Pullman* involves a misguided analysis concluding that "*Pullman* Abstention Would Not Be Proper Because There Is No Unsettled Issue Of State Law". (Opposition at. p. 9.)

Uncertainty for purposes of *Pullman* abstention means that a federal court cannot predict with any confidence how the state's highest court would decide an issue of state law. (*Pearl Investment Co. v. City & County of San Francisco,* 774 F.2d 1460, 1465 (9th Cir. 1985).) Resolution of an issue of state law might be uncertain if: (1) the statute at issue is ambiguous; (2) the precedents interpreting the statute conflict; or (3) a novel question of sufficient importance requires initial adjudication by the state court. (*Id.*)

Petitioner's claims involve "unsettled questions of state law". To illustrate, prior to the incorporation of Respondent City of Temecula, Respondent County of Riverside specially assessed Petitioner's Property at a "Commercial" rate in contemplation of its "Commercial" use. (California Streets and Highways Code §10000 et al.; see also, *Harrison v. Board of Supervisors of City of San Mateo*

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[1] *Burford v. Sun Oil Co.*, 319 U.S. 315, 63 S.Ct. 1098 (1943).

(1975) 44 Cal.App.3d 852, 857, 118 Cal.Rptr. 828 [recognizing that a mere "general benefit" inuring to the public as a whole will not justify a special assessment]; compare, *County of Fresno v. Malmstrom* (1979) 94 Cal.App.3d 974, 156 Cal.Rptr. 777 [finding that a special tax "need not . . . specifically benefit the taxed property" in the same manner as a special assessment].) Respondent City of Temecula, on the other hand, promulgated a general plan in conjunction with its incorporation as a California city, whereunder Petitioner's Property was restricted to a "Professional Office" use.

The juxtaposition of Respondent County of Riverside's special assessments vis-a-vis Respondent City of Temecula's restrictive zoning has created a quandary whereunder the maximum land use permissible under Respondent City of Temecula's general plan is insufficient to satisfy the special assessments levied by Respondent County of Riverside; thereby rendering the Property economically inviable. The regulatory taking arising from these incompatible regulations is an issue of first impression for the California courts. (*Georgevich v. Strauss*, 772 F.2d 1078, 1091 (3rd Cir. 1985) [recognizing that juxtaposition of otherwise clear statutes can create an independent ambiguity authorizing *Pullman* abstention]; see also, *Furey v. City of Sacramento* (1979) 24 Cal.3d 862, 157 Cal.Rptr. 684 [distinguishable on grounds that property owners petitioned for the formation of the assessment district].)[2]

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[2] Contrary to Respondent's assertions, the state law proceedings do not have to entirely obviate the federal law issue. It is sufficient for purposes of *Pullman* that the state

C. Petitioner Has Not Waived Its Right Of Access To A Federal Forum.

Respondent erroneously asserts that Petitioner has waived its right to litigate its federal claims within a federal forum. (Opposition at p. 11.) These unsubstantiated assertions are incorrect for the following reasons:

1. Federal Precedence Requires The Employment Of State Inverse Condemnation Procedures.

It is well settled that the Fifth Amendment does not prohibit all takings, but merely takings unaccompanied by just compensation. To this end, an "as applied" challenge is unripe unless the plaintiff has sought "compensation through the procedures the State has provided for doing so." (*Williamson County Regional Planning Comm'n v. Hamilton Bank*, 473 U.S. 172, 105 S.Ct. 3108 (1985); see also, *Jones Intercable v. City of Chula Vista*, 80 F.3d 320, 324 (9th Cir. 1996).)

An inverse condemnation litigant cannot avoid the prescripts of the abstention doctrines by refusing to raise its state claims within the federal forum. (*Santa Fe Land Improvement Co. v. City of Chula Vista*, 596 F.2d 838, 840 (9th Cir. 1979); *Muskegon Theatres, Inc. v. City of Muskegon*, 507 F.2d 199, 204 (6th Cir. 1974).) Similarly, failure to raise all federal claims within the state forum may result in the

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proceedings narrow the federal issue[s]. (*Pearl Investment Company v. City and County of San Francisco*, 774 F.2d at 1464; *C-Y Development Co. v. City of Redlands*, 703 F.2d 375, 379 (9th Cir. 1983).)

waiver of the same. (See, *Schall v. Joyce,* 885 F.2d 101, 107 (3rd Cir. 1989); *Huffman v. Pursue, Ltd.* 420 U.S. 592, 611 n.22, 95 S.Ct. 1200 (1975).)

Petitioner has filed concurrent state and federal complaints in compliance with the federal precedential prescripts for protecting its access to a federal forum for the adjudication of its federal rights. (See, *Furey v. City of Sacramento,* 780 F.2d 1448 (9th Cir. 1986).) The Ninth Circuit, however, has broken with its prior precedence and prohibited Petitioner's right of access to a federal forum by dismissing the action under *Younger,* rather than simply issuing a stay under *Pullman.* (See e.g., *Sinclair Oil Corp. v. County of Santa Barbara,* 96 F.3d 401 (9th Cir. 1996); *Bank of America Nat. T&S v. Summerland City Water Dist.,* 767 F.2d 544 (9th Cir. 1985); *Pearl Investment Co. v. City and County of San Francisco,* 774 F.2d 1460 (9th Cir. 1985); *Kollman v. City of Los Angeles,* 737 F.2d 830 (9th Cir. 1984); *Isthmus Landowners Ass'n v. State of California,* 601 F.2d 1087 (9th Cir. 1979); *Newport Investments v. City of Laguna Beach,* 564 F.2d 893 (9th Cir. 1977); *Rancho Palos Verdes Corporation v. City of Laguna Beach,* 547 F.2d 1092 (9th Cir. 1976).

This Court should grant its writ of certiorari to explain that the instant invocation of *Younger* both: (1) conflicts the prior precedence of the Ninth Circuit; and (2) inequitably prohibits Petitioner's access to a federal forum for the adjudication of its federal rights.

2. Petitioner Has Not Litigated Its Federal Claims To Judgment In The State Court.

It is settled that a litigant must inform the state court of his federal claims, so that the state issues may be construed in light of the federal claims. (*England v. Louisiana State Board of Medical Examiners*, 375 U.S. 411, 420, 84 S.Ct. 461 (1964).)

Petitioner properly presented its federal claims within the state forum. Petitioner, however, did not freely litigate its federal claims with the state forum. Rather, all state and federal claims were dismissed without leave to amend on demurrer by Respondent. (California Code of Civil Procedure §430.10.) Thus, no evidence was received by the state court concerning any of Petitioner's state or federal claims. (See, *Vaillette v. Firemans' Fund Ins. Co.* (1993) 18 Cal.App.4th 680, 685, 22 Cal.Rptr.2d 807; *Rauber v. Herman* (1991) 229 Cal.App.3d 942, 280 Cal.Rptr. 785.)

D. Contrary To Respondent's Assertions, Petitioner Does Not Want "Two Bites Out Of The Apple".

It is well settled that a state court judgment commands the same res judicata effects in federal court as it does in the rendering state court. (*St. John v. Wisconsin Employment Relations Bd.*, 340 U.S. 411, 71 S.Ct. 375 (1951); *State Corp. Comm'n v. Wichita Gas Co.*, 290 U.S. 561, 569, 54 S.Ct. 321 (1934). Thus, to the extent the California courts adjudicate Petitioner's federal claims, the doctrine of res judicata will govern the disposition of the federal issues.

E. Respondent Cannot Negate Petitioner's Proper Choice Of A Federal Forum.

The abstention doctrines do not abrogate the rule that "[t]he right of a party plaintiff to choose a Federal court where there is a choice cannot be properly denied." (*Willcox v. Consolidated Gas Co.*, 212 U.S. 19, 40, 29 S.Ct. 192 (1908); *England v. Louisiana State Board of Medical Examiners*, 375 U.S. at 415.) Thus, to the extent Respondent intends to force the litigation of Petitioner's federal rights within a state forum, such tactic is inapposite to the holdings of this Court.

CONCLUSION

Petitioner respectfully requests the Court to grant this petition for certiorari.

Dated: September 26, 1997

Respectfully submitted,

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